

AMENDED IN SENATE AUGUST 27, 2008
AMENDED IN SENATE AUGUST 22, 2008
AMENDED IN SENATE JULY 2, 2008
AMENDED IN SENATE JUNE 18, 2008
AMENDED IN ASSEMBLY MAY 28, 2008
AMENDED IN ASSEMBLY APRIL 8, 2008
AMENDED IN ASSEMBLY MARCH 24, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 2052

Introduced by Assembly Member Lieu

February 19, 2008

An act to add Section 1946.7 to the Civil Code, and to amend, *repeal, and add* Section 1161 of the Code of Civil Procedure, relating to tenancies, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2052, as amended, Lieu. Residential tenancies: domestic violence.

Existing law governs the renewal and termination of a lease of real property based on the terms of the lease, or on the behavior of the parties.

This bill would authorize a tenant to notify the landlord in writing that he or she or a household member, as defined, was a victim of an act of domestic violence, sexual assault, or stalking, as defined, and intends to terminate the tenancy. The bill would require the tenant to attach a copy of a temporary restraining order or emergency protective

order, or a copy of a specified written report by a peace officer, to the notice. The bill would authorize the tenant to quit the premises and the tenant would be discharged from payment of rent for any period following 30 days from the date of the notice, or as specified. The bill would provide that the notice to terminate the tenancy shall be given within 60 days of the date the order was issued or the report was made, or as specified.

The bill would provide that other tenants, except a household member who is a victim of domestic violence, sexual assault, or stalking and members of that person's family, are not released from their obligations under the rental agreement.

Existing law establishes the criteria for determining when a tenant is guilty of unlawful detainer of a premises, and includes committing nuisance in this regard. Existing law, until January 1, 2010, in specified courts, deems certain conduct involving illegal sales of controlled substances and unlawful use of illegal weapons as committing a nuisance on the premises.

This bill would provide, *only until January 1, 2012*, for the purposes of the law of unlawful detainer, that *if a person who commits specified acts of domestic violence, sexual assault, or stalking against another tenant or subtenant on the premises, may be presumed to have there is a rebuttable presumption affecting the burden of proof that the person has committed a nuisance on the premises if the victim or a member of the victim's household has not vacated the premises.*

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1946.7 is added to the Civil Code, to
- 2 read:
- 3 1946.7. (a) A tenant may notify the landlord that he or she or
- 4 a household member was a victim of an act that constitutes an act
- 5 of domestic violence as defined in Section 6211 of the Family
- 6 Code, sexual assault as defined in Sections 261, 261.5, 262, 286,
- 7 288a, or 289 of the Penal Code, or stalking as defined in Section
- 8 1708.7, and that the tenant intends to terminate the tenancy.

1 (b) A notice to terminate a tenancy under this section shall be
2 in writing, with one of the following attached to the notice:

3 (1) A copy of a temporary restraining order or emergency
4 protective order lawfully issued pursuant to Part 3 (commencing
5 with Section 6300) or Part 4 (commencing with Section 6400) of
6 the Family Code, Section 136.2 of the Penal Code, Section 527.6
7 of the Code of Civil Procedure, or Section 213.5 of the Welfare
8 and Institutions Code that protects the tenant or household member
9 from further domestic violence, sexual assault, or stalking.

10 (2) A copy of a written report by a peace officer employed by
11 a state or local law enforcement agency acting in his or her official
12 capacity, stating that the tenant or household member has filed a
13 report alleging that he or she or the household member is a victim
14 of domestic violence, sexual assault, or stalking.

15 (c) The notice to terminate the tenancy shall be given within 60
16 days of the date that any order described in paragraph (1) of
17 subdivision (b) was issued, within 60 days of the date that any
18 written report described in paragraph (2) of subdivision (b) was
19 made, or within the time period described in Section 1946.

20 (d) If notice to terminate the tenancy is provided to the landlord
21 under this section, the tenant shall be responsible for payment of
22 rent for 30 days following the giving of the notice, or within the
23 appropriate period as described in Section 1946, and thereafter
24 shall be released from any rent payment obligation under the rental
25 agreement without penalty. Existing law governing the security
26 deposit shall apply.

27 (e) If within the 30 days following the giving of the notice under
28 this section the tenant quits the premises and the premises are
29 rented to another party, the rent due on the premises for that 30-day
30 period shall be prorated. Existing law governing the security
31 deposit shall apply.

32 (f) Nothing in this section relieves a tenant, other than the tenant
33 who is, or who has a household member who is, a victim of
34 domestic violence, sexual assault, or stalking and members of that
35 tenant's household, from their obligations under the rental
36 agreement.

37 (g) "Household member" as used in this section means a member
38 of the tenant's family who lives in the same household as the
39 tenant.

1 SEC. 2. Section 1161 of the Code of Civil Procedure is
2 amended to read:

3 1161. A tenant of real property, for a term less than life, or the
4 executor or administrator of his or her estate heretofore qualified
5 and now acting or hereafter to be qualified and act, is guilty of
6 unlawful detainer:

7 1. When he or she continues in possession, in person or by
8 subtenant, of the property, or any part thereof, after the expiration
9 of the term for which it is let to him or her; provided the expiration
10 is of a nondefault nature however brought about without the
11 permission of his or her landlord, or the successor in estate of his
12 or her landlord, if applicable; including the case where the person
13 to be removed became the occupant of the premises as a servant,
14 employee, agent, or licensee and the relation of master and servant,
15 or employer and employee, or principal and agent, or licensor and
16 licensee, has been lawfully terminated or the time fixed for
17 occupancy by the agreement between the parties has expired; but
18 nothing in this subdivision shall be construed as preventing the
19 removal of the occupant in any other lawful manner; but in case
20 of a tenancy at will, it must first be terminated by notice, as
21 prescribed in the Civil Code.

22 2. When he or she continues in possession, in person or by
23 subtenant, without the permission of his or her landlord, or the
24 successor in estate of his or her landlord, if applicable, after default
25 in the payment of rent, pursuant to the lease or agreement under
26 which the property is held, and three days' notice, in writing,
27 requiring its payment, stating the amount which is due, the name,
28 telephone number, and address of the person to whom the rent
29 payment shall be made, and, if payment may be made personally,
30 the usual days and hours that person will be available to receive
31 the payment (provided that, if the address does not allow for
32 personal delivery, then it shall be conclusively presumed that upon
33 the mailing of any rent or notice to the owner by the tenant to the
34 name and address provided, the notice or rent is deemed received
35 by the owner on the date posted, if the tenant can show proof of
36 mailing to the name and address provided by the owner), or the
37 number of an account in a financial institution into which the rental
38 payment may be made, and the name and street address of the
39 institution (provided that the institution is located within five miles
40 of the rental property), or if an electronic funds transfer procedure

1 has been previously established, that payment may be made
2 pursuant to that procedure, or possession of the property, shall
3 have been served upon him or her and if there is a subtenant in
4 actual occupation of the premises, also upon the subtenant.

5 The notice may be served at any time within one year after the
6 rent becomes due. In all cases of tenancy upon agricultural lands,
7 where the tenant has held over and retained possession for more
8 than 60 days after the expiration of the term without any demand
9 of possession or notice to quit by the landlord or the successor in
10 estate of his or her landlord, if applicable, he or she shall be deemed
11 to be holding by permission of the landlord or successor in estate
12 of his or her landlord, if applicable, and shall be entitled to hold
13 under the terms of the lease for another full year, and shall not be
14 guilty of an unlawful detainer during that year, and the holding
15 over for that period shall be taken and construed as a consent on
16 the part of a tenant to hold for another year.

17 3. When he or she continues in possession, in person or by
18 subtenant, after a neglect or failure to perform other conditions or
19 covenants of the lease or agreement under which the property is
20 held, including any covenant not to assign or sublet, than the one
21 for the payment of rent, and three days' notice, in writing, requiring
22 the performance of such conditions or covenants, or the possession
23 of the property, shall have been served upon him or her, and if
24 there is a subtenant in actual occupation of the premises, also, upon
25 the subtenant. Within three days after the service of the notice, the
26 tenant, or any subtenant in actual occupation of the premises, or
27 any mortgagee of the term, or other person interested in its
28 continuance, may perform the conditions or covenants of the lease
29 or pay the stipulated rent, as the case may be, and thereby save the
30 lease from forfeiture; provided, if the conditions and covenants of
31 the lease, violated by the lessee, cannot afterward be performed,
32 then no notice, as last prescribed herein, need be given to the lessee
33 or his or her subtenant, demanding the performance of the violated
34 conditions or covenants of the lease.

35 A tenant may take proceedings, similar to those prescribed in
36 this chapter, to obtain possession of the premises let to a subtenant
37 or held by a servant, employee, agent, or licensee, in case of his
38 or her unlawful detention of the premises underlet to him or her
39 or held by him or her.

1 4. Any tenant, subtenant, or executor or administrator of his or
2 her estate heretofore qualified and now acting, or hereafter to be
3 qualified and act, assigning or subletting or committing waste upon
4 the demised premises, contrary to the conditions or covenants of
5 his or her lease, or maintaining, committing, or permitting the
6 maintenance or commission of a nuisance upon the demised
7 premises or using the premises for an unlawful purpose, thereby
8 terminates the lease, and the landlord, or his or her successor in
9 estate, shall upon service of three days' notice to quit upon the
10 person or persons in possession, be entitled to restitution of
11 possession of the demised premises under this chapter. For
12 purposes of this subdivision, a person who commits an offense
13 included in paragraph (1) of subdivision (c) of Section 11571.1 of
14 the Health and Safety Code, or subdivision (c) of Section 3485 of
15 the Civil Code, or uses the premises to further the purpose of that
16 offense shall be deemed to have committed a nuisance upon the
17 premises. For purposes of this subdivision, ~~a person who~~ *if a person*
18 commits an act of domestic violence as defined in Section 6211
19 of the Family Code, sexual assault as defined in Section 261, 261.5,
20 262, 286, 288a, or 289 of the Penal Code, or stalking as defined
21 in Section 1708.7, against another tenant or subtenant on the
22 premises ~~may be presumed to have~~ *there is a rebuttable*
23 *presumption affecting the burden of proof that the person has*
24 committed a nuisance upon the premises, provided, however, that
25 this shall not apply if the victim of the act of domestic violence,
26 sexual assault, or stalking, or a household member of the victim,
27 other than the perpetrator, has not vacated the premises. This
28 subdivision shall not be construed to supersede the provisions of
29 the Violence Against Women and Department of Justice
30 Reauthorization Act of 2005 (Public Law 109-162) that permit the
31 removal from a lease of a tenant who engages in criminal acts of
32 physical violence against cotenants.

33 5. When he or she gives written notice as provided in Section
34 1946 of the Civil Code of his or her intention to terminate the
35 hiring of the real property, or makes a written offer to surrender
36 which is accepted in writing by the landlord, but fails to deliver
37 possession at the time specified in that written notice, without the
38 permission of his or her landlord, or the successor in estate of the
39 landlord, if applicable.

1 As used in this section, tenant includes any person who hires
2 real property except those persons whose occupancy is described
3 in subdivision (b) of Section 1940 of the Civil Code.

4 *This section shall remain in effect only until January 1, 2012,*
5 *and as of that date is repealed, unless a later enacted statute, that*
6 *is enacted before January 1, 2012, deletes or extends that date.*

7 SEC. 3. Section 1161 is added to the Code of Civil Procedure,
8 to read:

9 1161. A tenant of real property, for a term less than life, or the
10 executor or administrator of his or her estate heretofore qualified
11 and now acting or hereafter to be qualified and act, is guilty of
12 unlawful detainer:

13 1. When he or she continues in possession, in person or by
14 subtenant, of the property, or any part thereof, after the expiration
15 of the term for which it is let to him or her; provided the expiration
16 is of a nondefault nature however brought about without the
17 permission of his or her landlord, or the successor in estate of his
18 or her landlord, if applicable; including the case where the person
19 to be removed became the occupant of the premises as a servant,
20 employee, agent, or licensee and the relation of master and servant,
21 or employer and employee, or principal and agent, or licensor
22 and licensee, has been lawfully terminated or the time fixed for
23 occupancy by the agreement between the parties has expired; but
24 nothing in this subdivision shall be construed as preventing the
25 removal of the occupant in any other lawful manner; but in case
26 of a tenancy at will, it must first be terminated by notice, as
27 prescribed in the Civil Code.

28 2. When he or she continues in possession, in person or by
29 subtenant, without the permission of his or her landlord, or the
30 successor in estate of his or her landlord, if applicable, after
31 default in the payment of rent, pursuant to the lease or agreement
32 under which the property is held, and three days' notice, in writing,
33 requiring its payment, stating the amount which is due, the name,
34 telephone number, and address of the person to whom the rent
35 payment shall be made, and, if payment may be made personally,
36 the usual days and hours that person will be available to receive
37 the payment (provided that, if the address does not allow for
38 personal delivery, then it shall be conclusively presumed that upon
39 the mailing of any rent or notice to the owner by the tenant to the
40 name and address provided, the notice or rent is deemed received

1 by the owner on the date posted, if the tenant can show proof of
2 mailing to the name and address provided by the owner), or the
3 number of an account in a financial institution into which the
4 rental payment may be made, and the name and street address of
5 the institution (provided that the institution is located within five
6 miles of the rental property), or if an electronic funds transfer
7 procedure has been previously established, that payment may be
8 made pursuant to that procedure, or possession of the property,
9 shall have been served upon him or her and if there is a subtenant
10 in actual occupation of the premises, also upon the subtenant.

11 The notice may be served at any time within one year after the
12 rent becomes due. In all cases of tenancy upon agricultural lands,
13 where the tenant has held over and retained possession for more
14 than 60 days after the expiration of the term without any demand
15 of possession or notice to quit by the landlord or the successor in
16 estate of his or her landlord, if applicable, he or she shall be
17 deemed to be holding by permission of the landlord or successor
18 in estate of his or her landlord, if applicable, and shall be entitled
19 to hold under the terms of the lease for another full year, and shall
20 not be guilty of an unlawful detainer during that year, and the
21 holding over for that period shall be taken and construed as a
22 consent on the part of a tenant to hold for another year.

23 3. When he or she continues in possession, in person or by
24 subtenant, after a neglect or failure to perform other conditions
25 or covenants of the lease or agreement under which the property
26 is held, including any covenant not to assign or sublet, than the
27 one for the payment of rent, and three days' notice, in writing,
28 requiring the performance of such conditions or covenants, or the
29 possession of the property, shall have been served upon him or
30 her, and if there is a subtenant in actual occupation of the premises,
31 also, upon the subtenant. Within three days after the service of the
32 notice, the tenant, or any subtenant in actual occupation of the
33 premises, or any mortgagee of the term, or other person interested
34 in its continuance, may perform the conditions or covenants of the
35 lease or pay the stipulated rent, as the case may be, and thereby
36 save the lease from forfeiture; provided, if the conditions and
37 covenants of the lease, violated by the lessee, cannot afterward be
38 performed, then no notice, as last prescribed herein, need be given
39 to the lessee or his or her subtenant, demanding the performance
40 of the violated conditions or covenants of the lease.

1 *A tenant may take proceedings, similar to those prescribed in*
2 *this chapter, to obtain possession of the premises let to a subtenant*
3 *or held by a servant, employee, agent, or licensee, in case of his*
4 *or her unlawful detention of the premises underlet to him or her*
5 *or held by him or her.*

6 4. *Any tenant, subtenant, or executor or administrator of his or*
7 *her estate heretofore qualified and now acting, or hereafter to be*
8 *qualified and act, assigning or subletting or committing waste*
9 *upon the demised premises, contrary to the conditions or covenants*
10 *of his or her lease, or maintaining, committing, or permitting the*
11 *maintenance or commission of a nuisance upon the demised*
12 *premises or using the premises for an unlawful purpose, thereby*
13 *terminates the lease, and the landlord, or his or her successor in*
14 *estate, shall upon service of three days' notice to quit upon the*
15 *person or persons in possession, be entitled to restitution of*
16 *possession of the demised premises under this chapter. For*
17 *purposes of this subdivision, a person who commits an offense*
18 *included in paragraph (1) of subdivision (c) of Section 11571.1 of*
19 *the Health and Safety Code, or subdivision (c) of Section 3485 of*
20 *the Civil Code, or uses the premises to further the purpose of that*
21 *offense shall be deemed to have committed a nuisance upon the*
22 *premises.*

23 5. *When he or she gives written notice as provided in Section*
24 *1946 of the Civil Code of his or her intention to terminate the*
25 *hiring of the real property, or makes a written offer to surrender*
26 *which is accepted in writing by the landlord, but fails to deliver*
27 *possession at the time specified in that written notice, without the*
28 *permission of his or her landlord, or the successor in estate of the*
29 *landlord, if applicable.*

30 *As used in this section, tenant includes any person who hires*
31 *real property except those persons whose occupancy is described*
32 *in subdivision (b) of Section 1940 of the Civil Code.*

33 *This section shall become operative on January 1, 2012.*

34 SEC. 4. *This act is an urgency statute necessary for the*
35 *immediate preservation of the public peace, health, or safety within*
36 *the meaning of Article IV of the Constitution and shall go into*
37 *immediate effect. The facts constituting the necessity are:*

38 *In order to ensure that victims of domestic violence, sexual*
39 *assault, and stalking may avail themselves of the protections*

- 1 *afforded by this act as soon as possible, it is necessary that this*
- 2 *act take effect immediately.*

O